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SEC

SERVICE DATE - SEPTEMBER 21, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 3X)<sup>1</sup>

NEW YORK CENTRAL LINES, LLC—ABANDONMENT  
EXEMPTION—IN BERKSHIRE COUNTY, MA

MOTION FOR PROTECTIVE ORDER

Decided: September 20, 2001

By motion filed September 17, 2001, Housatonic Railroad Company, Inc. (Housatonic) seeks a protective order pursuant to 49 CFR 1104.14 with respect to the confidentiality of its balance sheet submitted in support of its offer of financial assistance (OFA).<sup>2</sup>

Housatonic has filed both a confidential version of its OFA under seal and a redacted version for public inspection. Housatonic states that the confidential version of its OFA contains sensitive commercial information (financial information reflected in its balance sheet), disclosure of which could be damaging.<sup>3</sup>

The motion conforms with the Board's rule at 49 CFR 1104.14 governing requests for protective orders. Accordingly, the request will be granted. Because Housatonic did not submit a proposed protective order, the form set out in the appendix to this decision will be imposed.

It is ordered:

1. Housatonic's motion for protective order is granted.
2. The parties are directed to comply with the protective order in the appendix to this decision.

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<sup>1</sup> This decision embraces STB Docket No. AB-55 (Sub-No. 595X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Berkshire County, MA.

<sup>2</sup> The motion for protective order was simultaneously filed with Housatonic's OFA to provide continued rail service for approximately 1.91 miles of rail line in Berkshire County, MA, by purchase of the entire line segment.

<sup>3</sup> The balance sheet is attached to the confidential version of the OFA as Exhibit A.

3. The confidential materials filed under seal and so designated will remain under seal and will not be placed in the public docket or otherwise disclosed to the public.

4. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

## APPENDIX

### PROTECTIVE ORDER

1. To the extent that materials reflecting confidential or proprietary information are submitted in pleadings by any party to this proceeding, such materials must be treated as confidential. Such materials, any copies, and any data derived therefrom:

(a) Shall be designated and stamped as “CONFIDENTIAL” and shall be submitted in a package clearly marked on the outside “Confidential Materials Subject to Protective Order.”

(b) Shall not be disclosed in any way or to any person without the written consent of the party producing the materials or an order of the Board, except to employees, counsel or agents of the party requesting such materials, solely for use in connection with this proceeding, and any judicial review proceeding arising therefrom, provided that such employee, counsel or agent has been given and has read a copy of this Protective Order and, by executing the attached undertaking, agrees to be bound by its terms prior to receiving access to such materials.

2. If any party intends to use “CONFIDENTIAL” material at hearings in this proceeding, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such “CONFIDENTIAL” material to the Board or the reviewing court, with a written request to the Board or the court to (a) restrict attendance at the hearings during discussion of such “CONFIDENTIAL” material, and (b) restrict access to the portion of the record or briefs reflecting discussion of such “CONFIDENTIAL” material in accordance with this Protective Order.

3. If any party intends to use “CONFIDENTIAL” material in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent and all other counsel attending the deposition, and all portions of the deposition at which any such “CONFIDENTIAL” material is used shall be restricted to persons who may review that material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of or disclose “CONFIDENTIAL” material shall be kept under seal and treated as “CONFIDENTIAL” material in accordance with the terms of this Protective Order.

4. To the extent that materials reflecting confidential or proprietary information are produced by a party in this or any related proceedings and held and used by the receiving person in compliance with paragraph 1 above, such production, disclosure and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904.

5. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING  
CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, have read the Protective Order pertaining to the confidential documents in STB Docket No. AB-565 (Sub-No. 3X), et al., understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in STB Docket No. AB-565 (Sub-No. 3X), et al., or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of the Order and has not executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: \_\_\_\_\_